

APR 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES E. SMITH,

Plaintiff - Appellant,

v.

DIRECTORS OF THE ENEMY OF  
ALIEN CONTROL UNIT OF THE  
DEPARTMENT OF JUSTICE,

Defendant - Appellee.

No. 08-15591

D.C. No. 1:07-CV-00508-LJO-  
TAG

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, District Judge, Presiding

Submitted March 18, 2009<sup>\*\*</sup>

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

James E. Smith, a California state prisoner, appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action pursuant to the screening

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

provisions of 28 U.S.C. §§ 1915(e) and 1915A. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed the action for failure to state a claim because Smith failed to allege facts that demonstrated that his constitutional rights were violated, and did not allege facts to support relief under any federal or state law. *See id.* at 449.

The district court did not abuse its discretion by denying Smith's request for attorney's fees because Smith was not the prevailing party. *See* 42 U.S.C. § 1988(b); *Richard S. v. Dep't of Developmental Servs. of Cal.*, 317 F.3d 1080, 1085 (9th Cir. 2003) (reviewing for an abuse of discretion the denial of attorney's fees).

Smith's remaining contentions are unpersuasive.

**AFFIRMED.**